Supreme Court, U.S.
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No. _____

In The
Supreme Court Of The United States

GOLD KIST INC. AND TEAMSTERS and
CHAUFFEURS UNION, LOCAL 612,
Petitioners,

v.

JIMMY HOOPER, ROBERT MCELRATH,
EZRA SANFORD, FRANK TRAVIS, FRED NICHOLS,
TROY MARCHBANKS, STEVE TURNER,
and JIMMY UPTAIN,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

[Entered 02/07/00]

United States Court of Appeals
For the Eleventh Circuit

No. 99-6147

District Court Docket No. 98-00352-CV-J-S

JIMMY HOOPER, individually and on behalf of all other employees similarly situated, ROBERT MCELRATH, EZRA SANFORD, FRANK TRAVIS, FRED NICHOLS, TROY MARCHBANKS, STEVE TURNER, JIMMY UPTAIN,

Plaintiffs-Appellants,

versus

GOLD KIST, INC.,
LOCAL 612 CHAUFFEURS UNION,

Defendants-Appellees.

- -

Appeal from the United States District Court
for the Northern District of Alabama

- -

Before BLACK, Circuit Judge, GODBOLD and FAY, Senior Circuit Judges.

BLACK, Circuit Judge, dissented and filed and opinion.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby REVERSED;

It is FURTHER ORDERED THAT defendants-appellees pay to the plaintiffs-appellants, the costs on appeal to be taxed by the Clerk of Court.

Entered: February 7, 2000
For the Court: Thomas K. Kahn, Clerk

By: /s/ Deputy Clerk

ISSUED AS MANDATE: APR 20, 2000

APPENDIX B

[DO NOT PUBLISH]
[02/07/00]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-6147

D.C. Docket No. 98-00352-CV-J-S

JIMMY HOOPER, individually and on behalf of all other employees similarly situated, ROBERT MCELRATH, EZRA SANFORD, FRANK TRAVIS, FRED NICHOLS, TROY MARCHBANKS, STEVE TURNER, JIMMY UPTAIN,

Plaintiffs-Appellants,

versus

GOLD KIST, INC.,
LOCAL 612 CHAUFFEURS UNION,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(February 7, 2000)

Before BLACK, Circuit Judge, GODBOLD AND FAY, Senior Circuit Judges.

PER CURIAM:

Plaintiffs-Appellants, Jimmy Hooper, Robert McElrath, Ezra Sanford, Frank Travis, Fred Nichols, Troy Marchbanks, Steve Turner, and Jimmy Uptain (feed mill employees of Gold Kist), filed suit against Defendants-Appellees, Gold Kist, Inc. and the Teamsters and Chauffeurs Union Local 612 ("Union"). The plaintiffs claimed that Gold Kist violated § 301 of the Labor Management Relations Act of 1947 (29 U.S.C. § 185) by breaching the February 1998 employment contract between Gold Kist and the Union. Plaintiffs also allege that the Union, as the exclusive bargaining agent for the employees, breached its fiduciary duty owed to all members of the union. Both Gold Kist and the Union moved for summary judgments, which were subsequently granted by the trial court. After careful review of the agreement and record, and upon hearing argument of both counsel, we reverse the summary judgment orders.

Summary judgment is appropriate only if there are no genuine issues of material fact in dispute. Fed. R. Civ. P. 56(c). A dispute about material fact exists if a reasonable jury could return a verdict in favor of the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Because a reasonable jury could find that Gold Kist breached the employment agreement and that the union breached its fiduciary duty, we reverse.

In 1998, Gold Kist negotiated an employment contract with the union.[1] However, Gold Kist also negotiated a "side agreement" with the teamster truck drivers for extra compensation outside the terms of the written contract. The mill workers claim that this "side agreement" constitutes a breach of the written contract. A reasonable jury could find that paying the drivers in excess of the contract is a breach because Article 1, Section 5 of the written agreement requires, "[t]here shall be no individual agreements between the Company [Gold Kist] and an employee in conflict with this Agreement." Furthermore, Article 1, Section 6 states that the employment contract shall supercede and replace any previous agreement and Article 27, Section 116, requires that any amendment or revision to the written contract be "approved in writing and subscribed to by all parties to this agreement." Therefore, after considering the terms of the written contract, a reasonable jury could find that Gold Kist breached the employment agreement by entering into an oral "side agreement" with the teamsters.

The feed mill employees also claim that the union breached its fiduciary duty to them when it allowed this "side agreement" which favored the teamsters. Given that the union represented both the mill workers and the drivers, it had an obligation to represent both groups fairly. A reasonable jury could conclude that the union breached its duty of fair representation by promoting and allowing a side agreement that favored the drivers. Consequently, summary judgment was not appropriate.

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[1] The union represents both the feed mill workers and the teamster drivers.

Based on the foregoing reasons, we conclude that summary judgment was not appropriate because a reasonable jury could conclude that Gold Kist breached the terms of the written contract and that the union breached its fiduciary duty.

REVERSED.

BLACK, Circuit Judge, dissenting:

I respectfully dissent. Under a hybrid § 301/fair representation claim, Appellant must show both that Appellee Gold Kist breached the collective bargaining agreement and that Appellee Teamsters and Chauffeurs Union Local 612 (the Union) violated its duty of fair representation. *See Parker v. Connors Steel Co.*, 855 F.2d 1510, 1519 (11th Cir. 1988). Even assuming Gold Kist did breach the collective bargaining agreement, I do not believe a reasonable jury could conclude that the Union violated its duty of fair representation. Appellant has not shown that the Union's conduct can be "fairly characterized as so far outside of a 'wide range of reasonableness,' that it is wholly 'irrational' or 'arbitrary.'" *Airline Pilots Ass'n, Int'l v. O'Neill*, 111 S. Ct. 1127, 1136, 499 U.S. 65, 78 (1991) (quoting *Ford Motor Co. v. Huffman*, 73 S. Ct. 681, 686, 345 U.S. 330, 338 (1953)). Although the "side agreement" did favor the truck drivers, Appellant has not alleged any facts to show that this was the result of a breach of duty of fair representation. *See Spellicacy v. Airline Pilots Ass'n-Int'l*, 156 F.3d 120, 129 (2d Cir. 1988). The district court therefore was correct in granting summary judgment in favor of Appellees. Appellant's proper recourse is to be found in the collective bargaining process, not the courts.

APPENDIX C

[Filed 01/21/99]

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JIMMY HOOPER, ROBERT McELRATH, EZRA SANFORD, FRANK TRAVIS, FRED NICHOLS, TROY MARCHBANKS, STEVE TURNER and JIMMY UPTAIN,

Plaintiffs,

vs. CASE NO. CV-98-J-352-S

GOLD KIST INC., TEAMSTERS AND CHAUFFEURS UNION LOCAL 612,

Defendants.

ORDER

In accordance with the memorandum opinion entered this day, the court does **ORDER** that the defendant Union's second motion for summary judgment (doc. 60) be and hereby is **GRANTED**. It is further **ORDERED** by the court that the defendant Gold Kist's motion for summary judgment is also **GRANTED**.

DONE and **ORDERED** this the 21st day of January, 1999.

/s/ INGE P. JOHNSON
UNITED STATES DISTRICT JUDGE

APPENDIX D

[Filed 01/21/99]

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JIMMY HOOPER, ROBERT McELRATH, EZRA SANFORD, FRANK TRAVIS, FRED NICHOLS, TROY MARCHBANKS, STEVE TURNER and JIMMY UPTAIN,

Plaintiffs,

vs. CASE NO. CV-98-J-352-S

GOLD KIST INC., TEAMSTERS AND CHAUFFEURS UNION LOCAL 612,

Defendants.

MEMORANDUM OPINION

Currently pending before the court are the defendant Gold Kist's motion for summary judgment (doc. 62), and the defendant Teamsters and Chauffeurs Union's (hereinafter referred to as "Union") second motion for summary judgment (doc. 60), to which the plaintiffs and defendants have filed memoranda and exhibits in support of their respective positions.

The plaintiffs allege that the defendant Gold Kist breached the collective bargaining agreement it entered with

the Union in February, 1998 by failing to adhere to the wage schedule contained in that agreement.[1] (See complaint at 3). In a related claim, the plaintiffs also allege that the Union breached its duty of fair representation by refusing to confront Gold Kist about this pay disparity. *Id.* These claims are both brought pursuant to the National Labor Relations Act, 29 U.S.C. §185(a).

FACTS

The plaintiffs are employed as laborers by defendant Gold Kist at its feed mill in Jasper, Alabama. (Brief of Gold Kist at 3). The plaintiffs are members of Teamsters Local 612, which represents the employees of the feed mill and the truck drivers. Plaintiff Hooper has worked for Gold Kist since 1984. (Complaint at 2, amended complaint at 2). At all times relevant to this lawsuit, the defendant Union served as the exclusive and recognized collective bargaining representative for all employees of the feed mill. *Id.*

The Union alleges that Gold Kist has not changed the manner in which it compensates its employees since 1988. At least since that time the collective bargaining agreements

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[1] The plaintiffs' complaint actually alleges three separate collective bargaining agreements, from February, 1992, February, 1995 and February 1998. However, the Hon. Judge William Acker granted the defendant Union's motion to dismiss or, in the alternative, for summary judgment in part, ruling that no genuine issue of material fact exists with respect to any and all of the plaintiff's claims relating to the 1992 and 1995 collective bargaining agreements. See Order dated May 8, 1998. The plaintiffs filed an amended complaint June 17, 1998.

between the Union and Gold Kist have each included a wage schedule as "Exhibit A." (Affidavit of Wayne Fisher and Exhibits thereto.) Each of these wage schedules has included the language "[i]n addition to rates set forth in the above wage schedule, an additional ten cents (10¢) per hour will be paid to all feed mill employees in lieu of the incentive plan." (See Exhibit A to defendant Union's motion to dismiss or, in the alternative, for summary judgment filed April 8, 1998).

Plaintiffs allege that defendant Gold Kist has breached the terms of each of these contracts by paying tractor trailer drivers and truck drivers pursuant to "undisclosed terms outside the collective bargaining agreements." (Complaint at ¶ 10, amended complaint at ¶¶ 7, 10). Plaintiffs refer to this as a "verbal 'side agreement.'" Plaintiff's brief in opposition at 2. Plaintiffs further allege that the Union violated its duty to fully and fairly represent its members by entering this verbal agreement, and thus acted in bad faith. Amended complaint at ¶ 13. Plaintiffs' also state that the defendant Gold Kist's refusal to grant plaintiffs the right to negotiate, file a grievance and/or arbitrate this issue is a breach of the collective bargaining agreement. Amended complaint at ¶ 14.

On May 8, 1998, the Hon. William Acker granted summary judgment for the defendants on the plaintiffs' claims regarding contracts prior to the February, 1998 agreement because those prior agreements were expired and no longer in force. Order, May 8, 1998. Thus, this court is faced only with issues as they relate to the February, 1998 collective bargaining agreement. The same court order also dismissed the claims for mental anguish and emotional distress of plaintiff Jimmy Hopper, but not those claims of the subsequently added plaintiffs. *See* Order of July 20, 1998.

Defendant Gold Kist alleges that, in the mid-1970's, due to a strike by all employees at this feed mill including the truck drivers, Gold Kist and the Union entered an oral agreement for an incentive plan for the truck drivers. Memorandum in support of Gold Kist's motion for summary judgment at 5 (hereinafter referred to as "Gold Kist"), plaintiffs brief in opposition at 2. Pursuant to this agreement, the truck drivers can earn the hourly rate or an incentive rate, whichever is higher. Gold Kist at 5. To date, this agreement has never been reduced to writing. *Id.* While a separate incentive plan was established, also pursuant to an oral agreement, for the other feed mill employees during the same time frame, the defendants allege that the plan did not work well. Thus, in 1980, the Union, on behalf of the feed mill employees, negotiated an agreement with Gold Kist whereby these employees would give up their incentive pay in return for additional pay of ten cents an hour. *Id.* at 6. This agreement has appeared as note 2 of Appendix A, the wage schedule, in every collective bargaining agreement since 1980. *Id.* at 6-7; Union's memorandum in support at 6-7.

Before the collective bargaining agreement here at issue was entered, the topic of incentive pay was negotiated by the parties, however, no such pay plan was agreed to by the parties. Gold Kist at 9-11. All of the plaintiffs were present for the ratification vote on the contract for the current collective bargaining agreement. Only five of the 32 members of the bargaining unit present voted against acceptance of the contract as it was, without an incentive pay plan. *Id.* at 11. Thus, at least three of the plaintiffs had to have voted for acceptance of the contract without an incentive pay plan. Additionally, plaintiff Fred Nichols recommended to the feed mill employees that they vote to ratify the proposed

1998 Agreement. Union's Reply to Brief in Opposition of Plaintiffs at 5 (hereinafter referred to as "Union's Reply"), citing depo. of Nichols at 134.

DISCUSSION

The Court has read all of the motions for summary judgment, the responses thereto and all replies which were filed as well as all of the evidence and depositions filed in support of said motions. On motions for summary judgment, the court is to construe the evidence and factual inferences arising therefrom in the light most favorable to the non-moving party. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

Standard for Summary Judgment

Summary judgment can be entered on a claim only upon a showing that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The burden then shift to the nonmoving party to "go beyond the pleadings and by ... affidavits, or by the 'depositions, answers to interrogatories, and admissions on file' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324, Fed. R. Civ. Pro 56(e). The plaintiff must present "affirmative evidence' to establish

a genuine dispute of material fact in order to defeat the summary judgment motion, by showing that evidence exists upon which a finder of fact can reasonable find in its favor. *Anderson v. Liberty Lobby*, 477 U.S. 242, 251-253, 255-58 (1986).

While all evidence and factual inferences are to be viewed in a light most favorable to the nonmoving party. *Rollins v. TechSouth, Inc.* 833 F.2d 1525, 1529 (11th Cir. 1987); *Everett v. Napper* , 833 F.2d 1507, 1510 (11th Cir. 1987), "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact," *Anderson*, 477 U.S. at 248. A fact is not material unless it is an essential element of the nonmoving party's case. *Id.*

Hybrid §301/Fair Representation Action

In this action, the plaintiffs allege that Gold Kist has breached the 1998 collective bargaining agreement by paying its truck drivers at a rate greater than that established by the wage schedule attached to the contract as Exhibit A. Plaintiffs allege that this breach constitutes a violation of §301 of the Labor Management Relations Act, 29 U.S.C. §185. Amended complaint at ¶¶ 7, 10, 14. The plaintiffs also allege that because the Union has failed to address the disparity in pay rate, the Union has breached its duty of fair representation. Amended complaint at ¶ 13. Where, as here, plaintiffs allege a violation of these two distinct causes of action in the same suit, the case is commonly referred to as a "hybrid" §301/fair representation action. *Hechler v. Int'l Bhd. Of Elec. Workers, AFL-CIO*, 834 F.2d 942, 943 (11th Cir. 1987).

Plaintiffs must establish both that the company breached the collective bargaining agreement and that the union violated its duty of fair representation in order to prevail in a hybrid §301/duty of fair representation action. *Parker v. Connors Steel Co.*, 855 F.2d 1510, 1519 (11th Cir. 1988), *cert. denied*, 490 U.S. 1066, 109 S.Ct. 2066 (1989); *see also Hines v. Anchor Motor Freight*, 424 U.S. 554, 570-571 (1976)(stating that the plaintiff has the burden to demonstrate a breach by each of the defendants). Thus, if no breach of the duty of fair representation occurred by defendant union, then whether defendant Gold Kist breached the collective bargaining agreement cannot be reached by this court.

> Such a suit, as a formal matter, comprises two causes of action. The suit against the employer rests on §301, since the employee is alleging a breach of the collective bargaining agreement. The suit against the union is one for breach of the union's duty of fair representation, which is implied under the scheme of the National Labor Relations Act. "Yet the two claims are inextricably interdependent. 'To prevail against either the company or the Union, ... [employee-plaintiffs] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating a breach of duty by the Union.'" *Mitchell*, 451 U.S., at 66-67, 101 S.Ct., at 1565-1566 (Stewart, J., concurring in the judgment), quoting *Hines*, 424 U.S., at 570-571, 96 S.Ct., at 1059. The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both.

DelCostello v. Int'l Bhd. Of Teamsters, 462 U.S. 151, 164, 103 S.Ct. 2281, 2290 (1983).[2]

This court's role in examining whether the defendant Union breached its duty of fair representation is "highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." *Air Line Pilots Assn. Int'l v. O'Neill*, 499 U.S. 65, 78, 111 S.Ct. 127, 1135 (1991). The United States Supreme Court has recognized that:

> The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.... Variations acceptable in the discretion of bargaining representatives ... may well include differences based upon such matters as the ... nature of the work [and] the time at which it is done....

Ford Motor Co. v. Huffman, 345 U.S. 330, 338-339, 73 S.Ct. 681, 686 (1953). Recognizing this tenet, the Second Circuit Court of Appeals has stated that a "union's reasoned decision

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[2] Although case law states that the court must dispose of the claims against the Union first in a "hybrid" action, *see e.g. United Parcel Service v. Mitchell*, 451 U.S. 56, 66-67, 101 S.Ct. 1559, 1565-66 (1981), this court finds that here, due to the plaintiffs framing of their claims, unless Gold Kist breached the contract by paying the truck drivers more than the stated rate, there can be no breach of the duty of fair representation.

to support the interests of one group of employees over the competing interests of another group does not constitute arbitrary conduct." *Spellacy v. Airline Pilots Assn.-International*, 156 F.3d 120, 129 (2nd Cir. 1988)(citations omitted). The plaintiff must establish, to prevail on its claim for violation of the Union's duty of fair representation that the Union acted in a manner that was "discriminatory, dishonest, arbitrary, or perfunctory." *Hechler*, 834 F.2d at 943 (quoting *DelCostello*, 462 U.S. at 164, 103 S.Ct. at 2290).

Breach of Contract Claim

The plaintiffs are suing the Union and their employer Gold Kist for paying a group of employees more than the contract allows. Plaintiffs allege in their amended complaint that they have lost income because the truck drivers make more money that the contract specifies. Amended complaint at ¶ 15. This court cannot find any logic in this argument. Assuming this court ordered the defendants to void their verbal contract and pay the truck drivers solely the hourly wage specified in the contract, the plaintiffs here would not earn any more money.

The wage schedule set out as Appendix A to the contract lists per hour amounts that the defendant employer must pay each particular class of employees. No where can this court find justification for the plaintiffs' proposition that paying an employee more than a required amount violates a contract, nor do plaintiffs cite any legal support for this novel contract interpretation. This court also cannot find any basis for the plaintiffs proposition that the verbal contract between Gold Kist and the truck drivers is contrary to the collective bargaining agreement.

The law in Alabama states that to establish a breach of contract, a plaintiff must establish (1) the existence of a contract; (2) performance by the plaintiff (3) defendant's failure to perform; (4) resulting damage to the plaintiff. *Southern Medical Health Systems, Inc. v. Vaughn*, 669 So.2d 98, 99 (Ala.1995)(citations omitted). Clearly, the collective bargaining agreement is a contract to which the plaintiffs have performed. However, the facts here do not lend themselves to this court finding a failure by the defendants to perform. Even if this court could find that by paying a certain group of employees greater than the hourly wage the defendant Gold Kist breached this contract, the court is still unable to find any damage to the plaintiffs from this alleged breach.[3]

The three sections of the collective bargaining agreement plaintiffs claim were breached are as follows:

> 4. The Company by this Agreement recognizes the Union as the sole and exclusive bargaining agent for all employees in the Bargaining Unit.
>
> 5. There shall be no individual agreements between the Company and an employee in conflict with this Agreement.
>
> 6. It is distinctly understood and agreed by all parties ... that any and all previous agreements whether oral

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[3] Surely the plaintiffs are not arguing that if defendant Gold Kist decided to give all employees an additional ten cents an hour raise, over and above what is called for in the wage schedule, that this would be a breach of the contract.

> or written, by and between the Company and the Union are superseded and replaced by this Agreement.

Agreement at 1.

The plaintiffs do not allege that Gold Kist recognized some bargaining unit other than the Union. The plaintiffs also do not allege that Gold Kist entered a separate agreement, with an individual employee, in conflict with the agreement. Rather, plaintiffs want this court to hold that this section can be construed to read that the company cannot entered a verbal agreement with the Union providing additional benefits to a particular class of employees. Paragraph 5 of the agreement simply does not state this. The third paragraph in dispute, that this agreement supercedes all prior agreements, also has not been breached by Gold Kist. Nothing in this paragraph prevent the defendants from entering a new verbal agreement in conjunction with each new collective bargaining agreement.[4]

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[4] This court has reviewed numerous cases where an opposite result was reached by the courts when reviewing a side agreement to a collective bargaining agreement. However, each of those cases were distinguish-able. Clearly, this was not a secret agreement, plaintiffs have known about the agreement for twenty years. Every contract between the parties since the 1970's has had the same verbal side agreement made between the union and Gold Kist. Nor did this case vary the provisions of the collective bargaining agreement. Finally, plaintiff did not rely on any of the cases the court reviewed which held that secret, unratified oral side agreements which lessened the employees rights constituted

(continued...)

As previously discussed, note 2 to the wage schedule states that "all feed mill employees" will be paid an additional ten cents per hour "in lieu of the incentive plan." Exhibits to plaintiffs' brief, Exhibit 2 at 23. Clearly, the parties to this contract agreed that the employees, including the plaintiffs, would earn ten cents an hour more than the wage schedule establishes in return for not having an incentive plan. The plaintiffs apparently want this court to order the defendants to renegotiate the contract that at least some of these plaintiffs voted to approve to obtain what they could not obtain through the collective bargaining process.

Breach of Duty of Fair Representation Claim

Plaintiffs argument is also troubled for another reason. In order to prove its claim that the Union breached its duty of fair representation, the plaintiffs allege that the Union had knowledge that the truck drivers are paid incentive pay when it is greater than their hourly pay. *See, e.g.,* plaintiffs' brief in opposition at 13. However, plaintiffs then state, to prove their breach of contract claim, that had "all the terms and rates of pay been properly disclosed, presented and negotiated, at issue is whether the Union would have, in good faith, properly negotiated a greater rate of pay for all employees,

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[4] (...continued)
breaches of the collective bargaining agreements at issue in each case. *See e.g. Merk v. Jewel Food Stores*, 945 F.2d 889 (7th Cir. 1990); *Central States Southeast & Southwest Areas Pension Fund v. KraftCo., Inc.* 799 F.2d 1098 (6th Cir. 1986). In fact, the plaintiffs never alleged that the union membership failed to ratify this side agreement.

including the plaintiffs." *Id* at 20. This is quite the impossibility: Since the Union knew about the variance in the truck drivers rate of pay, it breached its duty of fair representation, but if the Union **had known** it could have negotiated a better rate of pay for plaintiffs.

The plaintiff must establish, to prevail on its claim for violation of the Union's duty of fair representation that the Union acted in a manner that was "discriminatory, dishonest, arbitrary, or perfunctory. *Hechler*, 834 F.2d at 943 (quoting *DelCostello*, 462 U.S. at 164, 103 S.Ct. at 2290); *Air Line Pilots Assn. Int'l*, 499 U.S. at 67, 111 S.Ct. at 1130. *See also Grooms v. Wiregrass Electric Cooperative, Inc.*, 877 F.Supp. 602, 610 (M.D. Ala. 1995). The court finds that the standard for whether a union has violated its duty of fair representation has not been met in this case.

The United States Supreme Court has long recognized that a union has the statutory duty to "serve the interest of all members without hostility or discrimination towards and, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Breininger v. Sheet Metal Workers Int'l*, 493 U.S. 67, 73, 110 S.Ct. 424, 429 (1989) (quoting *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S.Ct. 903, 910 (1967)). Courts will consider union behavior arbitrary "only if, in the light of the factual and legal landscape at the time of the union's actions, the union' behavior is so far outside a 'wide range of reasonableness' as to be irrational." *Airline Pilots Assn., Int'l* 499 U.S. at 67, 11 S.Ct. at 1130 (internal citations omitted).

Here, the plaintiffs make the mere bald allegation that the Union somehow acted in bad faith because no incentive pay

agreement was reached. They do not allege that any set of facts which gives rise to an inference of discrimination by the Union in its negotiating separate compensation for truck drivers and non-truck drivers. Appendix A to the collective bargaining agreement, which at least some of the plaintiffs voted to adopt, clearly recognizes that different jobs are compensated at different rates. Likewise, the plaintiffs do not allege, nor can the court find any evidence that the Union acted arbitrarily. The Union has raised the issue of incentive pay for the mill employees during the negotiations leading to the current contract. Union's Reply at 3. This court can find no allegations by the plaintiffs that the Union engaged in dishonest or perfunctory behavior. The plaintiffs even raised the issue of the disparate pay agreement with the Union, as opposed to their Union Local. The International Brotherhood of Teamsters responded that, while such a compensation scheme, while possibly misguided, is not discriminatory or illegal. Exhibit 8 to plaintiffs' exhibits.

Similarly, Gold Kist alleges that incentive pay for the mill employees was attempted, however the employees were unable to earn incentive pay because this particular mill has a higher cost per ton production average than the company's average. Gold Kist at 11. Instead of an incentive plan which possibly would not allow the plaintiffs to ever earn incentive pay, the employees received a thirty cent per hour pay increase for the first year of the collective bargaining agreement, regardless of production. *Id.* Additionally, plaintiff Fred Nichols, when asked during his deposition, stated that he discussed the proposal to create and incentive or production bonus plan and the company did not agree to that proposal. Union's Reply at 3, citing to depo. of Nichols at 36. This is different from plaintiffs' allegation that the Union did

not bargain with the company regarding incentive pay. *See also* Union's memorandum in support of second motion for summary judgment at 2.

Plaintiffs also allege that the Union breached its duty of fair representation by ignoring their grievances and failing to take any action on their behalf. Plaintiffs' brief in opposition at 22. However, as discussed below, the plaintiffs undisputedly did not file a grievance regarding this collective bargaining agreement, before coming to court.

Failure to Exhaust
Administrative Remedies

Plaintiffs also allege repeatedly in their brief that they have been trying to follow the grievance procedure regarding the truck drivers incentive pay since 1979, but then state "at issue is whether a written contract disclosing the truckers higher rate of pay would have been approved by all the employees who voted." *Id.* Yet the plaintiffs have known that the trucker drivers earn more than their specified hourly rate of pay for twenty years.[5] *See e.g.* Affidavit of Marc Cain

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[5] While plaintiffs knowledge of this verbal agreement for approximately twenty years raises a statute of limitations problem, the court finds that due to its rulings on other issues the question of whether the statute of limitations has run does not need to be addressed. Furthermore, this court finds that the statute of limitations here acts as a two edged sword against the defendants. The defendant Gold Kist states that "it has been common knowledge that the drivers receive the greater of incentive pay or their hourly rates in performing their duties. Therefore, Plaintiffs'

(continued...)

(1989 grievance; 1992 tried to negotiate feed mill incentive), and Affidavit of Fred Nichols (1975 negotiated for feed mill incentive; 1979 gave up incentive pay for additional ten cents per hour; 1980 attempted to file a grievance; since 1980 tried to negotiate wages competitive to truck drivers; 1990 spoke with Paul Tillman about filing a grievance) Exhibits to Plaintiffs brief in Opposition, Exhibit 3; (1979 grievance); *Id* at Exhibit 5 (1993 letter to Gold Kist's Vice President of Human Resources); *Id* at Exhibit 8 (1994 letter from International Brotherhood of Teamsters stating no legal claim for discrimination exists)[6].

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[5] (...continued)
claims accrued long before the August 13, 1997, date that marks the six month statute of limitations." Brief of Gold Kist at 8. However, this defendant states in the same brief that "Gold Kist and the Union entered into this verbal side agreement after the 1998 contract was signed." *Id.* at 5. Seeing as the collective bargaining agreement itself states that all previous agreements whether oral or written, by and between the company and the Union are superseded and replaced by this Agreement, Agreement at 1, the defendants have no choice but to consider the side agreement at issue here to have been entered since this collective bargaining agreement was entered and hence, there is no statute of limitations problem.

[6] In the June, 21, 1994 letter from the International Brotherhood of Teamsters to plaintiff Fred Nichols, submitted by plaintiffs as Exhibit 8 of their Exhibits to Plaintiffs Brief in Opposition, Mark Junod, Warehouse Trade Division Representative writes "[i]n your case, the company tailored a program to all drivers. This is both legal and common. The company did not make a similar offer to non-driver employees .... However misguided, such a policy or
(continued...)

The 1998 collective bargaining agreement contains a grievance procedure and arbitration policy which requires employees to attempt to exhaust their administrative rights before filing a suit in federal court. *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653, 85 S.Ct. 614, 617 (1965); *Hayes v. Reynolds Metals Co.*, 769 F.2d 1520, 1522 (11th Cir. 1985), *reh'g denied, en banc*, 782 F.2d 180 (11th Cir. 1986) and *Samples v. Ryder Truck Lines, Inc.*, 755 F.2d 881, 885-886 (11th Cir. 1985) all recognize that federal labor policy requires employees to use contract grievance procedures. Where a collective bargaining agreement contains an arbitration clause, those procedures must be exhausted before an employee files a § 301 suit. *Vaca v. Sipes*, 386 U.S. 171, 184-185, 87 S.Ct. 903, 913-914 (1967).

Plaintiffs here do not allege that they have exhausted their contractual remedies. Plaintiff Hooper's attempt to file a grievance regarding these claims occurred after this lawsuit was filed. Union's Reply at 4, citing Hooper depo. at 20. Because no grievance was filed by any of the plaintiffs until after this suit was filed, the Union could not have breached its duty of fair representation in not representing the plaintiffs in their grievance against the Union. Furthermore, the collective bargaining agreement provides that either side to a dispute may refer the matter to an impartial arbitrator. Agreement at ¶ 95-97, Exhibit 2 to Exhibits to plaintiffs' brief. The plaintiffs make no allegations that these provisions were utilized.

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[6] (...continued)
lack thereof is not illegal."

CONCLUSION

The motion for summary judgment by defendant Gold Kist is hereby **GRANTED**. The second motion for summary judgment by defendant Union is hereby **GRANTED**.

DONE and **ORDERED** this the 21st day of January, 1999.

/s/ INGE P. JOHNSON
UNITED STATES DISTRICT JUDGE

APPENDIX E

[Filed 05/08/98]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JIMMY HOOPER, both individually and on behalf of all other employees similarly situated,	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	NO. 98-AR-0352-S
GOLD KIST, INC. and TEAMSTERS & CHAUFFEURS UNION, LOCAL 612,	)	
Defendants.	)	

ORDER

For reasons more fully set out in the memorandum opinion accompanying this order, the court **EXPRESSLY DETERMINES** that no genuine issue of material fact exists with respect to any and all of plaintiff's claims relating to the 1992 and 1995 collective bargaining agreements, his claim for punitive damages, or his claim for mental anguish and emotional distress and that defendant, Teamsters & Chauffeurs Union, Local 612 ("Union"), is entitled to judgment as a matter of law on said claims. Accordingly, it is **OR-**

DERED, ADJUDGED, and **DECREED** that the Union's motion for summary judgment is hereby **PARTIALLY GRANTED**, and the action, insofar as it asserts claims relating to the 1992 and 1995 collective bargaining agreements, a claim for punitive damages against the Union, and a claim for mental anguish and emotional distress, is **DISMISSED WITH PREJUDICE**. Except to the extent that the Union's motion for summary judgment is granted, it is **DENIED**.

DONE this 8th day of May, 1998.

/s/ WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX F

[Filed 05/08/98]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JIMMY HOOPER, both individually and on behalf of all other similarly situated employees,	)	
Plaintiffs,	)	CIVIL ACTION NO. CV-98-AR-0352-S
vs.	)	
GOLD KIST INC. and TEAMSTERS & CHAUFFEURS UNION, LOCAL 612,	)	
Defendants	)	

MEMORANDUM OPINION

The above-entitled action is now before the court on a motion to dismiss or, in the alternative, for summary judgment filed by defendant, Teamsters & Chauffeurs Union, Local 612 ("Union"), on April 8, 1998. The court entered a submission order on that same day and, thereby, deemed the Union's motion as one made pursuant to Rule 56, Fed.R.Civ.P.

Plaintiff, Jimmy Hooper ("Hooper"), alleges that defendant, Gold Kist, Inc. ("Gold Kist"), breached collective

bargaining agreements it entered with the Union in 1992, in 1995, and in early 1998 by failing to adhere to the wage schedules contained in those agreements. In a related claim, Hooper also alleges that, as a result of its refusal to confront Gold Kist about this pay disparity, the Union breached its duty of fair representation to union members. Hooper makes both allegations pursuant to section 301 of the National Labor Relations Act, 29 U.S.C. § 185(a) ("NLRA" or "§ 301"). For the reasons set out more fully below, the court concludes that the Union's motion is due to be granted in part and denied in part.

I. Pertinent Undisputed Facts

Hooper began working for Gold Kist as a laborer on October 22, 1984. Compl. at ¶ 5. He continues as an employee with Gold Kist today and works at the company's Feed Mill located in Jasper, Alabama (the "Feed Mill"). *Id.* at ¶¶ 5-6. Hooper is a member of the Union. *Id.* at ¶ 6. At all times relevant to this lawsuit, the Union served as the collective bargaining representative of all employees of the Feed Mill. *Id.*

On or about February 1, 1992, the Union entered into a collective bargaining agreement with Gold Kist on behalf of all Feed Mill employees. *Id.* at ¶ 8. This collective bargaining agreement included a wage schedule which dictated the hourly rate of pay for all Feed Mill employees, including truck drivers. *Id.* at ¶ 9. The Union entered into successive and substantially similar collective bargaining agreements with Gold Kist on or about February 1, 1995, and on or about February 1, 1998. *Id.* at ¶ 8.

According to Hooper, notwithstanding these collective bargaining agreements, Gold Kist paid, and continues to pay, its truck drivers more than is allowed under the binding wage schedules. *Id.* at ¶ 10. Hooper alleges that, "When this disparate pay rate was addressed by employees in negotiating the terms of each of the collective bargaining agreements in 1992, 1995, and 1998, both Gold Kist officers and union officers informed employees that this matter was not negotiable." *Id.* at 11. On February 13, 1998, Hooper filed this lawsuit, alleging breach of contract against Gold Kist and breach of the duty of fair representation by the Union. *Id.* at ¶ 1.

II. Summary Judgment Standard

Rule 56 states in pertinent part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 56(c), Fed.R.Civ.P. In addition, the Eleventh Circuit has observed that "[s]ummary judgment is appropriate where there exists no genuine issue of material fact and the movant is entitled to judgment as a matter of law." Turnes v. AmSouth Bank, N.A., 36 F.3d 1057, 1061 (11th Cir. 1994). The Union has invoked Rule 56.

III. Discussion

As an initial matter, the court concludes that any and all of Hooper's claims relating to the 1992 and 1995 collective bargaining agreements are due to be dismissed as a matter of law. It is well settled that "claims arising from expired collective bargaining agreements are actionable [only] as unfair labor practices." *Johnson v. Pullman, Inc.*, 845 F.2d 911, 914 (11th Cir. 1988). As a result, such claims fall with the exclusive jurisdiction of the National Labor Relations Board. *Id.* (citing *San Diego Bldgs. Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773 (1959)). In other words, "a federal court has jurisdiction over a suit for a violation of a collective bargaining agreement under § 301 only while the agreement is in force." *Id.*; *see also United Paperworkers Int'l Union v. Int'l Paper*, 920 F.2d 852, 859 (11th Cir. 1991). Therefore, given that this court is without jurisdiction over Hooper's claims regarding Gold Kist's alleged breach of the expired 1992 and 1995 collective bargaining agreements, the Union must necessarily receive summary judgment on his duty of fair representation claims relating to those agreements. *See Parker v. Connors Steel Co.*, 855 F.2d 1510, 1519 (11th Cir. 1988) (explaining that, in hybrid § 301/fair representation action, the two claims are interdependent, and plaintiff must prove both claims to prevail), *cert. denied*, 490 U.S. 1066, 109 S. Ct. 2066 (1989). For the balance of this opinion, the court will address Hooper's claims as if they relate to the 1998 collective bargaining agreement only.

A. Statute of Limitations

As noted above, Hooper alleges that Gold Kist breached the 1998 collective bargaining agreement by paying its truck drivers at a rate greater than that established by the wage schedule contained in the labor contract. Compl. at ¶¶ 1, 7. Hooper also alleges that, because the Union failed to address this pay disparity with Gold Kist the Union breached its duty of fair representation. Compl. at ¶ 1. Where, as here, an employee combines these two distinct claims into a single lawsuit, the federal courts commonly refer to such cases as "hybrid" § 301/fair representation actions. *Hechler v. Int'l Bhd. of Elec. Workers, AFL-CIO*, 834 F.2d 942, 943 (11th Cir. 1987). Furthermore, as the Union correctly observes, the Supreme Court of the United States and other federal appellate courts have consistently held that the six-month statute of limitations found in § 10(b) of the NLRA applies in hybrid § 310/fair representation actions. *See e.g., DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 169-70, 103 S. Ct. 2281, 2293-94 (1983); *see also Parker v. Connors Steel Co.*, 885 F.2d 1510, 1519 (11th Cir. 1988), *cert. denied*, 490 U.S. 1066, 109 S. Ct. 2066 (1989); *Rogers v. Lockheed-Georgia Co.*, 720 F.2d 1247, 1249 (11th Cir.), *cert. denied*, 469 U.S. 916, 105 S. Ct. 292 (1984).

In an attempt to circumvent the applicable six-month limitations period, Hooper argues, in essence, that this lawsuit is not a typical hybrid § 301/fair representation action. More specifically, Hooper contends that, because his complaint alleges that the Union "conspired" with Gold Kist to breach the 1998 collective bargaining agreement, this action is principally one for breach of contract. According to Hooper, this last fact makes Alabama's six-year statute of

limitations for breach of contract claims more appropriate in this case. Hooper's argument is unpersuasive for two reasons. First, all of the authority Hooper uses as support for this proposition is readily distinguishable from the instant case and, therefore, inapposite. For example, in one case he relies upon, *Garcia v. Eidal Int'l Corp.*, 808 F.2d 717 (10th Cir. 1998), the court of appeals declined to enforce the six-month limitations period only because the employer *unilaterally* repudiated the collective bargaining agreement at issue. *Id.* at 722. According to the Tenth Circuit, in such circumstances, "the labor law policies that persuaded the Court in *DelCostello* to adopt the uniform six-month statute of limitation are not applicable." *Id.* Obviously, where, as here, one alleges that his employer and union have *conspired* to breach the collective bargaining agreement, any reliance on *Garcia* to avoid the six-month limitations period is misplaced. Second, and more important, the mere fact that a union may have engaged in wrongdoing that goes beyond its alleged breach of duty does not, as Hooper suggests, obviate the applicability of the six-month limitations period in cases like this one. As one court explained:

> The claim . . . need not be a "classic" hybrid claim. *The six month limitation period is applicable whenever there is a [duty of fair representation] claim.*

Landry v. Air Line Pilots Ass'n Int'l, 901 F.2d 404, 411 (5th Cir.) (emphasis supplied), *cert. denied*, 498 U.S. 895, 111 S. Ct. 244 (1990). Given that Hooper clearly alleges that the Union breached its duty of fair representation, the court concludes that the six-month statute of limitations first announced in *DelCostello* applies with equal force in this case. Having determined the appropriate limitations period,

the court will now address whether Hooper's claim regarding the 1998 collective bargaining agreement is timely.

B. Is Hooper's Claim Timely?

Not surprisingly, the Union contends that Hooper's claim is not timely. As support for this position, the Union points to statements made both in the complaint and in affidavits submitted by Hooper which suggest that he and others were aware of the Union's refusal to confront Gold Kist about the alleged pay disparity in 1995, in 1992, and perhaps earlier. According to the Union, given that Hooper filed this lawsuit on February 13, 1998, these statements demonstrate that his claim accrued years ago, and, therefore, falls well outside of the six-month statute of limitations. This argument is not well taken.

It is well settled that "a cause of action accrues under § 301, and the statute of limitations begins to run, when in the exercise of reasonable diligence the claimant knew or should have known of the injury." *Hill v. Georgia Power Co.*, 786, F.2d 1071, 1074-75 (11th Cir. 1986). As the Eleventh Circuit has explained:

> "[T]he timeliness of the suit must be measured from the date on which the employee knew or should have known of the union's final action or the date on which the employee knew or should have known of the employer's final action, whichever occurs later . . . . By final action we mean the point where the grievance procedure was exhausted or otherwise broke down to the employee's disadvantage."

Id. at 1075 (quoting *Proudfoot v. Seafarer's Int'l Union*, 779 F.2d 1558, 1559 (11th Cir. 1986)). Generally, when a cause of action accrues is a question of fact. *Samples v. Ryder Truck Lines, Inc.*, 755 F.2d 881, 887 (11th Cir. 1985). However, "in certain instances, the issue can be resolved on a motion for summary judgment." *Hill*, 786 F.2d at 1075. At present, the instant case does not provide that opportunity.

Although the court agrees that the record evidence suggests that Hooper had knowledge that the Union would not address the alleged pay disparity when it negotiated the 1992 collective bargaining agreement, that fact has little, if any, bearing on whether his claim regarding the 1998 collective bargaining agreement is timely. The 1998 collective bargaining agreement is a separate contract, and, as such, it is unrelated to both the 1992 and 1995 collective bargaining agreements. Thus, any claim relating the 1998 collective bargaining agreement represents a separate cause of action that is distinct from any that exist, or that may have existed, vis-a-vis any prior labor contracts with Gold Kist. The appropriate question, then, is whether Hooper had knowledge that the Union would not address the alleged pay disparity in negotiating the 1998 collective bargaining agreement more than six months before he filed this lawsuit. Viewing the evidence in the light most favorable to Hooper, this court cannot say that, at present, the record unequivocally demonstrates that he had such knowledge. Accordingly, summary judgment is not appropriate on Hooper's claims regarding the 1998 collective bargaining agreement at this time. However, if, after further discovery, it becomes clear that Hooper did have such knowledge, then the court will revisit this decision. In the meanwhile, the Union can take comfort in the fact that, as a result of the court's dismissal of Hooper's claims regard-

ing the 1992 and 1995 collective bargaining agreements, Hooper will not reap any windfall in damages.

C. Hooper's Claim for Punitive Damages

In his complaint, Hooper asks the court to award punitive damages to punish the Union for its alleged breach of duty. Compl. at ¶ 16b. The Union argues that such awards are inappropriate in this circumstance. The court agrees. It is well established that, under the NLRA, punitive damages are not available against a union for breach of its duty of fair representation. *See Wilson v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIO*, 83 F.3d 747, 754 (6th Cir.) (citing *Int'l Bhd. of Elec. Workers v. Foust*, 442 U.S. 42, 52, 99 S. Ct. 2121, 2127 (1979)), *cert. denied*, ___ U.S. ___, 117 S. Ct. 610 (1996). Indeed, Hooper concedes this point in his response to the Union's motion for summary judgment. Accordingly, the court concludes that Hooper's claim for punitive damages against the Union is due to be dismissed.

D. Hooper's Claim for Mental Anguish

Hooper also asks this court to award him damages for mental anguish and emotional distress occasioned by the Union's alleged wrongdoing. Compl. at ¶ 16b. In response, the Union argues that, because such damages are awarded in hybrid § 301/fair representation actions only in very unusual circumstances not present here, this claim should be dismissed. This argument is well taken.

According to the First Circuit, "emotional distress damages should be awarded in fair representation suits only

in 'exceptional cases of misconduct.'" *Cantrell v. Int'l Bhd. of Elec. Workers, Local 2021*, 32 F.3d 465, 468 (10th Cir. 1994). Moreover, other federal "[c]ourts have found extreme and outrageous misconduct only in exceptional circumstances, such as where the plaintiff was subjected to 'constant chanting, jeering, and gesturing, a constant rain of nuts, bolts, and screws, intentional cigarette burns, vandalism of cars and lockers and vulgarities about his wife.'" *Id.* (citing *Bloom v. Int'l Bhd. of Teamsters, Local 468*, 752 F.2d 1312, 1315 (9th Cir. 1984). A review of Hooper's complaint reveals that he makes no such allegations, and he makes no showing of outrageous conduct on the part of the Union in defense of this claim. In the absence of any such allegations or showing, the court necessarily concludes that Hooper's claim for mental anguish and emotional distress damages are due to be dismissed. As the Union correctly observes, Hooper cannot "be allowed to casually toss in a demand for [such damages] at his Complaint's tail end, having made no allegations to support that claim." Mem. In Support of Mot. for Summ. J. at 9.

This conclusion remains unchanged despite Hooper's contention that, given the embryonic character of this proceeding, he has not had an adequate opportunity to discover facts to support his claim for mental anguish and emotional distress. Common sense suggests that where, as here, one seeks compensation for mental and emotional injuries, substantial discovery is unnecessary because, as the alleged "victim," he should have sufficient personal knowledge of the events giving rise to those injuries either to satisfy the liberal notice pleading standards or to create a jury question, unless, of course, one's purported injuries include amnesia. Indeed, this court fails to understand at all how

protracted discovery can better enable a plaintiff to recall the sort of extreme behavior that merits an award of damages for mental anguish. Therefore, as nothing in the record suggests that Hooper's memory is impaired, the mere fact that this proceeding is still in its initial phases does not preclude summary judgment on his claim for mental and emotional distress.

E. Hooper's Claim for Attorneys' Fees

Lastly, Hooper's complaint asks the court to award him attorneys' fees as a part of the prayed for relief. Compl. at ¶ 16c. Pointing to the "American Rule," the Union argues that such relief is inappropriate in the absence of specific statutory or contractual fee-shifting authority. More specifically, the Union argues that, because the NLRA does not authorize awards for attorneys' fees, this claim should be dismissed. The court disagrees.

In a very recent decision, the Sixth Circuit explained:

> In a hybrid § 301 suit, the employer and the union are liable "according to the damage caused by the fault of each." (Citation omitted.) *When a union breaches its duty of fair representation, a member can recover expenses, including attorneys' fees and costs, incurred in pursuing his claims against the employer.* (Citation omitted.) These expenses are the damages flowing from the union's breach; if the union had fulfilled its duty, the member would not have had to spend his own resources. *Therefore, these damages do not violate the traditional American Rule regarding attorneys' fees.* (Citation omitted.) The American rule

> only prevents the union member from recovering resources spent in pursing his claims against the union.

Vencl v. Int'l Union of Operating Eng'rs, Local 18, 137 F.3d 420, 426 (6th Cir. 1998) (emphasis supplied). In the absence of controlling authority to the contrary, the court finds the Sixth Circuit's reasoning to be persuasive. Consequently, with respect to Hooper's claim for attorneys' fees, the Union's motion for summary judgment is denied.

IV. Conclusion

The court will enter a separate and appropriate order in accordance with this memorandum opinion.

DONE this 8th day of May, 1998.

/s/ WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX G

[Filed 04/11/00]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 99-6147-HH

JIMMY HOOPER, individually and on behalf of all other employees similarly situated, ROBERT MCELRATH, EZRA SANFORD, FRANK TRAVIS, FRED NICHOLS, TROY MARCHBANKS, STEVE TURNER, JIMMY UPTAIN,

Plaintiffs-Appellants,

versus

GOLD KIST, INC.,
LOCAL 612 CHAUFFEURS UNION,

Defendants-Appellees.

- -

On Appeal from the United States District Court for the Northern District of Alabama

- -

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19_, ___ F.2d ___).

Before: BLACK, Circuit Judge GODBOLD and FAY, Senior Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Peter T. Fay
UNITED STATES CIRCUIT JUDGE

APPENDIX H

TITLE 29 - LABOR
CHAPTER 7 - LABOR-MANAGEMENT RELATIONS
SUBCHAPTER II - NATIONAL LABOR RELATIONS

§ 158. Unfair labor practices

(a) Unfair labor practices by employer

It shall be an unfair labor practice for an employer—

. . . .

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

APPENDIX I

TITLE 29 - LABOR
CHAPTER 7 - LABOR-MANAGEMENT RELATIONS
SUBCHAPTER II - NATIONAL LABOR RELATIONS

§ 158. Unfair labor practices

(d) Obligation to bargain collectively

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2) to (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsec-

tion (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158, 159, and 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this subsection shall be modified as follows:

(A) The notice of paragraph (1) of this subsection shall be ninety days; the notice of paragraph (3) of this subsection shall be sixty days; and the contract period of paragraph (4) of this subsection shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in paragraph (3) of this subsection.

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

APPENDIX J

TITLE 29 - LABOR
CHAPTER 7 - LABOR-MANAGEMENT RELATIONS
SUBCHAPTER II - NATIONAL LABOR RELATIONS

29 USC Sec. 159

§ 159. Representatives and elections

(a) Exclusive representatives; employees' adjustment of grievances directly with employer

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

APPENDIX K

TITLE 29 - LABOR
CHAPTER 7 - LABOR-MANAGEMENT RELATIONS
SUBCHAPTER II - NATIONAL LABOR RELATIONS

§ 173. Unfair labor practices

(d) Use of conciliation and mediation services as last resort

Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

APPENDIX L

TITLE 29 - LABOR
CHAPTER 7 - LABOR-MANAGEMENT RELATIONS
SUBCHAPTER II - NATIONAL LABOR RELATIONS

29 USC Sec. 185

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments.

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any

individual member or his assets.

(c) Jurisdiction

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process

The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency

For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

APPENDIX M

[Filed 02/13/98]

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JIMMY HOOPER, both individually and on behalf of other employees similarly situated,	)	
Plaintiffs,	)	CIVIL ACTION NO. CV-98-AR-0352-S
v.	)	
GOLD KIST, INC.; TEAMSTERS AND CHAUFFEURS UNION LOCAL 612,	)	
Defendants.	)	

COMPLAINT

COMES NOW Jimmy Hooper, plaintiff, individually, and on behalf of all others similarly situated, by and through his attorney, K. David Sawyer and states the following Complaint against the above-named defendants, and for his cause of action alleges as follows:

1. Plaintiff Jimmy Hooper is an individual residing in the City of Parrish, State of Alabama, and brings this action against the Defendant Gold Kist, Inc. pursuant to § 301 of the Labor Management Relations Act, 1947 (29 USCA § 185), (hereinafter referred to as the Act), to recover damages for

and to obtain an injunction against the violation of three successive collective bargaining agreements; and against the Defendant Teamsters and Chauffeurs Union Local 612 for breach of its duty of fair representation owing to Plaintiff and all other employees similarly situated.

2. Jurisdiction of this action is conferred on this court by § 301 of the Act.

3. At all times hereafter mentioned, the Defendant Gold Kist, Inc., is engaged in a business affecting interstate commerce within the meaning of § 301, and within the definitions set forth in §§ 2(2) and 501(1) and (3) (29 USCA §§ 152(2), 142(1) and (2)) and maintains a Jasper, Alabama Feed Mill and its principal place of business in Atlanta, Georgia.

4. Defendant Teamsters and Chauffeur's Union Local 612 is, and was at all times hereinafter mentioned, a labor organization representing employees in an industry affecting commerce within the meaning of § 301 of the Act and within the definitions set forth in §§ 2(5) and 501(1) and (3) (29 USCA §§ 152(2), 142(1) and 3)), and maintains its principal office in Jefferson County, the City of Birmingham, State of Alabama.

5. Plaintiff was employed by Gold Kist, Inc. on October 22, 1984 as a laborer and is presently an employee of Gold Kist.

6. During all the times mentioned herein, defendant union was the collective bargaining representative of the

bargaining unit consisting of every defendant Gold Kist's Jasper Alabama Feed Mill employees, including plaintiff.

7. Plaintiff asserts that the applicable six-year Alabama statute of limitations applies as defendant Gold Kist has clearly breached the terms of each contract, including any and all terms relating to wage rates, grievance procedure and arbitration.

8. On or about February 1, 1992, on February 1, 1995, and again on or about February 1, 1998, the defendant union entered into successive collective bargaining agreements entitled "AGREEMENT between GOLD KIST, INC. JASPER, ALABAMA FEED MILL and TEAMSTERS AND CHAUFFEURS UNION LOCAL NO. 612" covering defendant Gold Kist's employees, including plaintiff.

9. Article 7 and Appendix "A" of each of the three collective bargaining agreements provided for and specifically defined the hourly rates to be paid all employees, including tractor trailer drivers and truck drivers.

10. Contrary to the provisions of each of these three collective bargaining agreements, tractor trailer drivers and truck drivers have been paid and are presently paid pursuant to undisclosed terms outside the collective bargaining agreements and thereby earn substantially more than other employees.

11. When this disparate pay rate was addressed by employees in negotiating the terms of each of the collective bargaining agreements in 1992, 1995 and 1998, both Gold

Kist officers and union officers informed employees that this matter was not negotiable.

12. The plaintiff and other employees have pursued this issue with Gold Kist and the union, but again, both Gold Kist officers and union officers have maintained and continue to assert that this disparate pay rate is not negotiable.

13. Plaintiff alleges that the defendant union, acting in bad faith and in breach of its duty of fair representation owing under the Act to plaintiff, and to all other similarly situated employees, has conspired with Gold Kist to maintain this disparate pay and to give all employees the impression that this disparate pay rate is not negotiable.

14. Gold Kist's method of paying certain employees outside the collective bargaining agreements and subsequent refusal to grant plaintiff and other employees the right to negotiate, file a grievance and/or arbitrate this issue constitutes a clear breach of each of the above collective bargaining agreements and a clear violation of the employees' collective bargaining rights pursuant to each contract.

15. As a direct and proximate result of aforementioned acts of each defendant having acted individually and/or in conspiracy together, plaintiff and numerous other similarly situated Jasper Feed Mill employees have lost and continue to lose significant income and have suffered damages, including mental anguish and emotional distress.

WHEREFORE, plaintiff prays:

a. That this Court issue an injunction restraining defendant company and/or defendant union from violating the present contract and the Jasper Feed Mill employees' collective bargaining rights;

b. That this Court command defendant Gold Kist and/or defendant union to pay to Plaintiff, and all other employees similarly situated, back-pay comparable to the past wages paid outside the 1992, 1995 and 1998 contracts to tractor trailer drivers and truck drivers; together with an award for mental anguish, emotional distress, and punitive damages, and;

c. That this Court grant plaintiff and all other employees similarly situated costs, attorney fees and such other and further relief as it may deem to be just and proper.

Dated February 13, 1998.

/s/ K. David Sawyer
Attorney for Plaintiff

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY

/s/ K. David Sawyer

OF COUNSEL:

K. David Sawyer, L.L.C.
300 21st Street North
Suite 301
Birmingham, Alabama 35203
(205) 322-2331

Served upon Defendants via Certified Mail

Gold Kist, Inc.
60 Commerce Street
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Montgomery, Alabama 36104

Teamsters and Chauffeurs Union, Local 612
50 Bagby Drive
Homewood, Alabama 35209-3704

APPENDIX N

[Filed 06/15/98]

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JIMMY HOOPER, ROBERT McELRATH, EZRA SANFORD, FRANK TRAVIS, FRED NICHOLS TROY MARCHBANKS, STEVE TURNER and JIMMY UPTAIN	)
Plaintiffs,	) CIVIL ACTION) NO.) CV-98-AR-352-S
v.	)
GOLD KIST, INC.; TEAMSTERS AND CHAUFFEURS UNION LOCAL 612,	)
Defendants.	)

FIRST AMENDED COMPLAINT

COME NOW Plaintiffs Jimmy Hooper, Robert McElrath, Ezra Sanford, Frank Travis, Fred Nichols, Troy Marchbanks, Steve Turner, and Jimmy Uptain, by and through their attorney, K. David Sawyer and state the following First Amended Complaint against the above-named defendants:

1. Plaintiffs Jimmy Hooper, Robert McElrath, Ezra Sanford, Frank Travis, Fred Nichols, Troy Marchbanks, Steve Turner, and Jimmy Uptain are individuals residing in

the State of Alabama, and bring this action against the Defendant Gold Kist, Inc. pursuant to § 301 of the Labor Management Relations Act, 1947 (29 USCA § 185), (hereinafter referred to as the Act), to recover damages for and to obtain an injunction against the violation of collective bargaining agreement; and against the Defendant Teamsters and Chauffeurs Union Local 612 for breach of its duty of fair representation owing to Plaintiffs.

2. Jurisdiction of this action is conferred on this court by § 301 of the Act.

3. At all times hereafter mentioned, the Defendant Gold Kist, Inc., is engaged in a business affecting interstate commerce within the meaning of § 301, and within the definitions set forth in §§ 2(2) and 501(1) and (3) (29 USCA §§ 152(2), 142(1) and (2)) and maintains a Jasper, Alabama Feed Mill and its principal place of business in Atlanta, Georgia.

4. Defendant Teamsters and Chauffeur's Union Local 612 is, and was at all times hereinafter mentioned, a labor organization representing employees in an industry affecting commerce within the meaning of § 301 of the Act and within the definitions set forth in §§ 2(5) and 501(1) and (3) (29 USCA §§ 152(2), 142(1) and 3)), and maintains its principal office in Jefferson County, the City of Birmingham, State of Alabama.

5. Plaintiffs were employed by Gold Kist, Inc. in February, 1998, as a laborers and are presently employees of Gold Kist.

6. During all the times mentioned herein, defendant union was the collective bargaining representative of the bargaining unit consisting of every Gold Kist Jasper Alabama Feed Mill employee, including plaintiffs.

7. Plaintiffs assert that defendant Gold Kist has clearly breached the terms of the February, 1998, contract, including any and all terms relating to wage rates, grievance procedures and arbitration.

8. On or about February 13, 1998, the defendant union entered into a collective bargaining agreement entitled "AGREEMENT between GOLD KIST INC. JASPER, ALABAMA FEED MILL and TEAMSTERS AND CHAUFFEURS UNION LOCAL NO. 612" covering Gold Kist's employees, including plaintiffs.

9. Article 7 and Appendix "A" of the collective bargaining agreement provided for and specifically defined the hourly rates to be paid all employees, including plaintiffs, tractor trailer drivers and truck drivers.

10. Contrary to the provisions of the collective bargaining agreement, tractor trailer drivers and truck drivers have been paid and are presently paid pursuant to undisclosed terms outside the collective bargaining agreements and thereby earn substantially more than plaintiffs and other employees.

11. When this disparate pay rate was addressed by plaintiffs in negotiating the terms of the collective bargaining agreement, both Gold Kist officers and union officers informed plaintiffs and other employees that this matter was not negotiable.

12. The plaintiffs have pursued this issue with Gold Kist and the union, but again, both Gold Kist officers and union officers have maintained and continue to assert that this disparate pay rate is not negotiable.

13. Plaintiffs allege that the defendant union, acting in bad faith and in breach of its duty of fair representation owing under the Act to plaintiffs, has conspired with Gold Kist to maintain this disparate pay and to give plaintiffs the impression that this disparate pay rate is not negotiable.

14. Gold Kist's method of paying certain employees outside the collective bargaining agreement and subsequent refusal to grant plaintiffs the right to negotiate, file a grievance and/or arbitrate this issue constitutes a clear breach of the collective bargaining agreement and a clear violation of the plaintiffs' collective bargaining rights pursuant to the contract.

15. As a direct and proximate result of aforementioned acts of each defendant having acted individually and/or in conspiracy together, plaintiffs have lost and continue to lose significant income and have suffered damages, including mental anguish and emotional distress.

WHEREFORE, plaintiffs pray:

a. That this Court issue an injunction restraining defendant company and/or defendant union from violating the present contract and the Jasper Feed Mill employees' collective bargaining rights;

b. That this Court command defendant Gold Kist and/or defendant union to pay to Plaintiffs back-pay comparable to the wages paid outside the contract to tractor trailer drivers and truck drivers; together with an award for mental anguish, emotional distress, and punitive damages, and;

c. That this Court grant plaintiffs costs, attorney fees and such other and further relief as it may deem to be just and proper.

Dated June 15, 1998.

/s/ K. David Sawyer
Attorney for Plaintiff

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY

/s/ K. David Sawyer

OF COUNSEL:
K. David Sawyer, L.L.C.
300 21st Street North
Suite 301
Birmingham, Alabama 35203
(205) 322-2331

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing pleading was served upon counsel for all parties as set out below, by placing a copy of same, in the United States mail, postage prepaid and properly addressed on this the 15th day of June, 1998.

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/s/ OF COUNSEL

APPENDIX O

AGREEMENT

between

GOLD KIST INC.
JASPER, ALABAMA FEED MILL

and

TEAMSTERS AND CHAUFFEURS UNION
LOCAL NO. 612

EFFECTIVE: February 1, 1998 to January 31, 2001

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AGREEMENT

1. THIS AGREEMENT entered into this 31st day of January, 1998, between GOLD KIST INC. as to Jasper, Alabama, Feed Mill and that MILL only (hereinafter referred to as the "Company") and TEAMSTERS LOCAL UNION NO. 612 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "Union"); Witnesses that:

2. When used herein: "Bargaining Unit" means the unit for collective bargaining purposes covered by the certification of the National Labor Relations Board in Case NO. 10-RC-5618 dated August 1, 1963, namely:

3. All production and maintenance employees at the Company's Jasper, Alabama, Feed Mill, including Truck Drivers of the Feed Mill, but excluding office clerical employees, buyers, salesmen, professional employees, technical employees, laboratory employees, guards and supervisors as defined in the Act.

ARTICLE 1 - RECOGNITION

4. The Company by this Agreement recognizes the Union as the sole and exclusive bargaining agent for all employees in the Bargaining Unit. The Company agrees, subject to the provisions of any law of the State of Alabama and of the United States, that any employee covered by this Agreement must become a member of the Union if their employment continues beyond forty-five (45) calendar days. The Company further agrees

that said person shall remain a member of the Union during the life of this Agreement.

5. There shall be no individual agreements between the Company and an employee in conflict with this Agreement.

6. It is distinctly understood and agreed by all parties to this Agreement that any and all previous agreements whether oral or written, by and between the Company and the Union are superseded and replaced by this Agreement.

ARTICLE 2 - PURPOSE

7. The purpose of this Agreement is to increase the effectiveness of the working and economic relationships between the Company, its employees and the Union.

8. The parties to this Agreement recognize the responsibilities mutually imposed upon them and realize that to provide maximum opportunities for continuing employment, maximum working conditions and adequate wages, the Company must be in a strong market position with respect to competition, which means that the Company must be able to produce efficiently and the lowest possible production cost consistent with fair labor standards. Accordingly, all parties to this Agreement accept responsibility and agree to assist in the attainment of the above objectives. To this end, the Union will cooperate with the Company to assure a full day's work on the part of the employee members and

will actively combat absenteeism and any other practices which would restrict and limit production. All parties to this Agreement will exercise their best efforts to improve production, eliminate waste production, conserve materials and supplies, improve the quality of products and workmanship, prevent accidents and strengthen good will between the Company and the Union and the general public.

ARTICLE 3 - CHECK-OFF

9. It is understood and agreed between the parties hereto that deductions for Union dues and initiation fees will be made from the wages of each employee who has voluntarily executed a written authorization therefore in the form attached as Appendix "B". Such deductions shall be made from the first pay check of each calendar month for such employees and the total amount deducted shall be remitted to the appropriate fiscal officer of the Union as promptly as possible, together with the list of employees on whose account such check-off is made.

ARTICLE 4 - MANAGEMENT

10. The Company shall at all times, subject to the provisions of this Agreement, have full control of matters relative to the management, personnel, and the conduct of its business. The Company shall control all its operations, the direction of its working forces, the hours of work, the methods of work, management of its plant and buildings, care and use of its machinery, the right to hire and promote employees and the right to monitor

its employees with hidden cameras anytime it unilaterally deems necessary with the exception of restrooms.

11. Any of the rights, powers, authority that the Company had prior to the signing of this Agreement are retained by the Company except those specifically abridged, delegated, granted or modified by this Agreement or any supplementary agreements that may hereafter be made.

12. Supervisors or anyone else outside the Bargaining Unit shall not perform the work of employees in the Bargaining Unit except in the case of any emergency, major breakdown or when instructing or training an employee. The Company has the right to have minor maintenance work performed by production employees up to a one-hour limit after actual work on the job has been started.

13. The Company in the exercise of its rights shall observe the provisions of this Agreement.

14. The Union and the Company agree separately and collectively that Gold Kist is an equal opportunity employer and, therefore, will not discriminate against any applicant or employees, and will ensure that they are treated equally without regard to their religion, race, color, sex, age, national origin, handicapped disabled veterans, veterans, or veterans of the Vietnam Era. This action shall include, but not be limited to, the following: Employment; upgrading or promotions, demotion or transfer; any form of recruiting; layoff or termination; callback; rates of pay or other forms of compensa-

tion; selections for training; and use of facilities. It is further agreed that both parties will fully comply with the requirements of the Americans With Disabilities Act including accommodations and reassignments as may be required under the Act which may supersede some of the terms of this agreement.

ARTICLE 5 - NO CONTRACT ASSIGNMENT

15. The Union agrees that it will not at any time assign this Agreement or any part of this Agreement to any other Union, Local or Affiliated unless it secures the written permission of the Company.

ARTICLE 6 - PROBATIONARY PERIOD

16. The Company may secure new employees from any source whatever.

17. A "probationary" employee is defined as one newly hired by the Company who has not completed their first forty-five (45) calendar days of service with the Company. After the expiration of the said forty-five (45) day period, such employees shall cease to be temporary or probationary employees, shall be entered on the seniority list, and shall rank in seniority from the date of their original hiring. During the probationary period their service may be dispensed with at the discretion of the Company and termination of their service for whatever reason shall not be subject to review of the grievance procedure.

18. "Probationary" employees shall receive five cents (5¢) per hour less than the regular straight-time hourly rate for the work performed as shown in Appendix "A" as attached hereto.

ARTICLE 7 - WAGE RATES

19. Job classifications and their applicable hourly rates are set forth in Appendix "A" as a part of this Agreement.

20. A shift differential shall be paid for all work performed on the second shift in the amount of ten cents (10¢) per hour and on the third shift in the amount of thirteen cents (13¢) per hour and such shift differential shall be used in computing overtime and premium time. This shift differential will be paid only to employees who are scheduled to work on the second and third shift.

21. Employees in any classification are expected to perform any duties to which they may be reasonably assigned.

22. All employees shall be paid their wages in full, minus authorized deductions, once each week. The day of the week designated as pay day shall be determined by the Company.

23. No payment will be made to members of either the Labor Relations or Negotiating Committees for the time spent in regularly scheduled Labor Relations Meetings or negotiation sessions.

24. Except as provided in Paragraph 25 below, an employee who is temporarily transferred to a job carrying

a base rate higher than the base rate for the employee's regular job shall receive the base rate of the job to which the employee is so transferred for all time worked on that job on that day.

25. If an employee is temporarily transferred to a job with a lower base rate, the employee's base rate shall not be reduced.

26. When it is necessary to permanently combine two or more production jobs in the interest of efficiency, the employee assigned to the combined job shall receive the highest pay rate of the jobs combined and the combined job shall be considered as a vacancy and filled in accordance with the bid procedure.

27. Paragraphs 24 and 25 above shall not apply to an employee who accepts a job in lieu of layoff nor to an employee who is promoted or demoted.

28. The Company agrees to furnish the truck driver rain gear consisting of:

    a. Raincoat
    b. Slip on Boots
    c. Rain Hat

The Company agrees to furnish aprons for welders.

It is further agreed this equipment is to be replaced as needed but under no circumstances more often than once each year. The Company agrees that Bulk Unloader will be furnished rain gear for work.

ARTICLE 8 - HOURS OF WORK, OVERTIME

29. This Article is intended only to provide a basis for calculating overtime and shall not be construed as a guarantee of or limitation upon hours per day or per week.

30. Forty (40) hours Monday through Sunday shall constitute a week's work and eight (8) hours shall constitute a day's work for the purpose of computing overtime. The work week will start at 12:01 a.m. Monday and end the same time on the following Monday. The work day will start at 12:01 a.m. one day and end the same time on the following day. Employees called in prior to their scheduled shift will be allowed to work their full normal shift. Truck drivers starting time will be 5:00 a.m. Feed Mill employees will start at 6:00 a.m.

31. All hours worked in excess of eight (8) straight-time hours per day and forty (40) straight-time hours per week will be paid at one and one-half (1 ½) times the regular hourly rate for the work performed. Unworked holidays, for which an employee receives holiday pay and which fall Monday through Friday, shall count as eight (8) hours straight-time for the purpose of computing weekly overtime pay.

32. If an employee has not had an opportunity to work forty (40) straight-time hours during Monday through Friday of a work week due to no work being available for the employee by the Company, that employee shall be compensated for all work the employee performed on Saturday of that work week at one and one-half (1 ½)

times the hourly rate of the work performed, and double time (2) for all work performed on Sunday of that work week; however, if an employee has failed to work forty (40) straight-time hours during Monday through Friday of a work week for any reason other than no work being available to the employee by the Company, the employee will be paid only at straight-time for hours worked on Saturday or Sunday until the employee has completed forty (40) straight-time hours during that work week.

33. There shall be no pyramiding of any overtime or premium pay provisions.

34. Employees shall be required to work overtime if the Company requests such overtime work. An employee will be excused from overtime work upon request if a qualified replacement can be obtained from the employees then at work. Saturday and/or Sunday work scheduled shall be posted by not later than 2:00 p.m. on Friday. However, this provision will in no way limit management's right to subsequently modify that schedule in any manner which is not in conflict with other provisions of this Agreement.

35. If an employee is scheduled to work or is called in on a day the employee is not scheduled to work and shows up for work at the appropriate starting time in good physical condition, and there is no work available, the employee shall receive a minimum of either four (4) hours work or four (4) hours pay at the applicable rate, except in the following circumstances:

36. A) If upon reporting to work a truck driver when no needed as such is offered other work the employee shall have the privilege of refusing it, however, if the employee refuses the alternative work the employee agrees to forfeit the guarantee for four (4) hours reporting pay as defined in ARTICLE 8 - 35.

    If upon reporting to work sufficient work is not available for a full Mill crew, work will be assigned on a seniority basis with refusal rights, provided there are qualified junior persons available to perform the necessary work. If the employee refuses the available work the employee agrees to forfeit the guarantee of four (4) hours reporting pay as defined in ARTICLE 8-35.

37. B) When two (2) hours' notice is given that the employee is not to report to work. Notice may be by plant posting, by telephone, letter, telegram or personal contact. It is the employee's responsibility to advise the Company of their correct address and correct telephone number, if any.

38. C) If the employee is not put to work either at the employee's own request or due to the employee's own fault or refusal to do the work assigned, or is laid off after having been put to work, either at the employee's own request or due to the employee's own fault or refusal to do the work assigned.

39. D) If there are matters beyond the control of the Company such as utilities' failure, fire, flood, storms, or

other Acts of God that interfere with the work to be performed.

40. E) If there is a strike by employees of the Company or employees of another company which interfere with the work to be performed.

41. There shall be no split shifts.

42. Employees will be granted shift preference on a six (6) month basis in accordance with their seniority. A sheet upon which all employees may indicate their shift preference will be posted each six (6) months. Such preference shall become effective at the beginning of the work week following the posting.

43. When overtime is required, those employees who shall do the work will be selected using the following procedure:

A. Overtime work to be performed on Saturday, Sunday or holidays will be assigned on the basis of qualifications and seniority. Employees so assigned will be required to perform whatever work is required.

B. During the regular work week (Monday - Friday) overtime work to be performed beyond the employees normal shift will be performed by the employee normally assigned to that job.

C. When an employee is absent for any reason (including vacation) the employees' job will be assigned to

any employee on the shift that has the qualifications to perform the work.

D. An employee that is called-in to work after the end of the employees' normal shift to return to work it will be on the basis of qualifications and seniority.

E. An employee is qualified to perform the job if they have permanently held the job or the company deems the employee qualified to perform the job.

F. In the event Saturday, Sunday or holiday is deemed to be a regular work day, which consists of a full shift, normal job assignments will prevail.

44. An employee will not be discriminated against for electing to not work overtime, but if requested to do so the employee must work up to four (4) hours overtime in any one shift unless there is a qualified junior person within the shift available, however, a truck driver will finish any run that they are on even if beyond twelve (12) hours.

45. An employee who is reassigned to general clean-up work, if requested to do so, must work up to two (2) hours overtime in any one shift.

46. Employees will be given at least one (1) hour notice when overtime is needed.

47. Employees will give at least a one (1) hour notice when they are unable to work as scheduled.

48. The Company agrees to pay an employee injured on the job a full days eight (8) hours for the day on which the employee is injured.

ARTICLE 9 - HOLIDAYS

49. The following holidays will be recognized:

New Years	Labor Day
Good Friday	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	Employee's Birthday
	*Floating Holiday

50. Each employee on the active payroll of the Company on these days will be paid eight (8) times their straight-time hourly rate of pay for each holiday if no work is performed on the holiday provided the employee has not failed to work when scheduled, unless excused, on the holiday and provided the employee worked the last scheduled day after the holiday occurred, except when the employee is on vacation. Employee will be excused for illness, in which case the Company reserves the right to have the illness, verified by a doctor. An employee may also be excused for other reasonable purposes provided such excuse is approved by the Company.

*A Floating Holiday is one selected by the employee at the convenience of the Company.

51. All work performed by an employee on New Year's Day, Good Friday, Memorial Day, Independence Day,

Labor Day, Thanksgiving Day, Christmas Day, and the employee's birthday, or the day observed as such, shall be paid at one and one-half (1 ½) times the employee's normal rate of pay for hours worked on the holidays, plus eight (8) hours pay at the employees base rate, provided that the employee works the scheduled hours on the last day before the holiday or the day observed as such, and the scheduled hours on the first day thereafter.

52. If any of the holidays fall on Sunday, the following Monday will be considered as the holiday in the administration of the pay provision of this Agreement.

ARTICLE 10 - SENIORITY

53. The term "seniority" as used herein shall mean the length of an employee's continuous service with the Company at its Jasper, Alabama, Feed Mill.

54. The term "continuous service" as used herein shall mean the employee's most recent period of unbroken seniority dating from the starting date of the employee's most recently completed probationary period.

55. An employee will lose their seniority and all rights as an employee in the event of any of the following:

A) If the employee quits.
B) If the employee is discharged.
C) If the employee does not report for work within five (5) work days after receiving notice recall. In the event that the Company is unsuccessful in person-

ally contacting an employee for recall, satisfactory notice shall be made by either telegram or registered letter to the last address which was furnished to the Company by the employee.

D) If the employee fails to return to work on the first week day following the expiration of a leave of absence.

E) If the employee has been absent from work due to a layoff for:

1) Twelve (12) consecutive months in the case of an employee with less than two (2) years seniority at the time the layoff began, or

2) Twenty-four (24) consecutive months in the case of an employee with more than two (2) years seniority at the time the layoff began.

F) The employee, while absent on account of sickness or injury, takes employment elsewhere.

G) The employee, while absent on account of leave, takes employment elsewhere.

H) If sick or injured and fails to furnish the Company with a doctor's certificate showing proof of the sickness or injury, if required.

I) The employee fails to report for work or call in giving a satisfactory explanation for such failure for three (3) consecutive scheduled work days.

56. The Company agrees in the event of a reduction in forces the affected employee shall have the option of taking the layoff or bumping the extent their seniority permits. If the employee elects to lay off, the employee

shall be called back to work when the job from which the employee was laid off is reactivated.

57. In reducing personnel because of lack of work, the employee with the least seniority shall be the first laid-off, providing the senior employees remaining are qualified to do the work required. If a senior employee has not previously bid on a job and had the opportunity to become qualified for it, the employee will have the opportunity to exercise the seniority and become qualified to avoid layoff. If an employee has already bid on a job and was found to lack the required qualifications, the employee will not be able to bid on the position to avoid layoff.

58. In the application of the seniority provision of this Article, a layoff shall be considered an interruption of employment caused by a reduction in force for more than five (5) working days.

59. Three (3) days' notice will be given to a permanent employee who is to be laid off for a period of two (2) weeks or more, provided that this paragraph shall not apply to a layoff made necessary by a strike or by reasons beyond the control of the Company. This paragraph shall not apply to an employee who has been working as a result of another employee's absence of five (5) days or more.

60. An employee on layoff will be required to leave a telephone number so the Company can contact the employee when any permanent job vacancy exists so the employee on layoff may bid on the vacancy.

If the employee does not provide a telephone number at which the employee can be reached, or if the Company and the Shop Stewards are unable to reach the employee during the two (2) working days the vacancy is open for the bid, the employee forfeits bid rights on the job.

61. Employees shall be placed on a seniority list which the Company shall prepare upon execution of this Agreement. Sickness, injury, temporary shutdown or temporary layoff shall not deprive an employee of the rights of seniority.

62. The Company agrees to furnish a copy of the seniority list to the Union covering all employees who have ninety (90) consecutive working days of continuous service. Such seniority list shall be posted on the bulletin board within a reasonable time after the execution of this Agreement.

63. In filling a new job, or any other permanent job vacancy with the exception of Maintenance Mechanics the bid procedure will be:

A) Written notice of such vacancy shall be posted for a period of two (2) working days.

B) Bid shall be written on a regular bid form signed and dated by the employee and placed in the bid box no later than the end of the two (2) day posting period.

C) Immediately upon determining the successful bidder on the basis of seniority, the Company shall notify the successful bidder of their selection.

D) The date the new job becomes effective will be listed on the posted job bid.

E) An employee, if necessary, shall be given a reasonable training period. For the intention of this Article "A reasonable training period" shall be up to:

Pellet Mill Operator	- 10 working days.
All other job classifications	- 10 working days.

F) With respect to Maintenance Mechanics, the Company reserves the right to hire any person from outside the Company because of their ability and experience but will give first consideration to employees within the Company. An announcement of job openings in this classification will be posted as a matter of information to our employees prior to filling the position.

64. With respect to truck drivers, an employee bidding for a truck driver job will be tested by the Company trucking supervisor and the decision as to the particular employee's ability to become a truck driver shall be made by the Company supervisor.

65. If an employee does not qualify on the job involved, the employee shall return to the former position without loss of seniority.

66. If an employee is assigned temporarily to a job other than the employee's bid job, a second employee will not be assigned to the employee's bid job while the employee is working on this temporary assignment, except when such assignment is the result of absenteeism.

ARTICLE 11 - VACATIONS

67. An employee who has been in the employ of the Company on the anniversary date of employment for at least one (1) year and less than two (2) years and who has worked not less than two hundred (200) days during the preceding twelve (12) month period shall receive one (1) week vacation with forty (40) hours pay at the employee's base rate.

68. An employee who has been in the employ of the Company on the anniversary date of employment for two (2) years and less than ten (10) years and who has worked two hundred (200) days during the preceding twelve (12) month period shall receive two (2) weeks' vacation with eighty (80) hours pay at the employee's base rate.

69. An employee who has been in the employ of the Company on the anniversary date of employment for ten (10) years and less than eighteen (18) years, and who has worked two hundred (200) days during the preceding twelve (12) month period shall receive three (3) weeks' vacation with one hundred and twenty (120) hours pay at the base rate. An employee who has been in the employ of the Company on the anniversary date of employment for eighteen (18) years or more, and

who has worked two hundred (200) days during the preceding twelve (12) month period shall receive four (4) weeks vacation with one hundred and sixty (160) hours pay at the employee's base rate.

70. For the purpose of determining whether an employee has complied with the two hundred (200) day work requirement set forth in the first four paragraphs of this Article, the following work days on which an employee is absent shall be considered as time worked for the purpose of such two hundred (200) days worked requirement only:

A) Work days on which an employee is necessarily absent from work due to an injury arising out of and in the course of employment with the Company.

B) Work days on which an employee is absent by reason of layoff but not more than fifty (50) days shall be so considered.

C) Work days on which an employee is absent by reason of proven sickness but not more than one hundred (100) such days shall be continued.

71. Vacations shall be granted at such times in the year as management finds most suitable, considering both the wishes of the employees, seniority of the employees, and the requirements of mill operation. Provided further, employees shall be given one (1) week's notice by the Company before their vacation period commences, and the employees shall make application for

their vacation at least one (1) week prior to the commencement of such vacation.

72. Vacations cannot be waived or allowed to accumulate from year to year but must be completed in each twelve (12) month period following the employee's anniversary date of employment.

73. Employees cannot waive their vacation and draw double pay for work during their vacation period unless in production emergencies the Company considers the services of the employee are necessary to the proper functioning of the Feed Mill. If an employee is due vacation pay and desires to work in lieu of taking time off from work with pay, the employee shall make this desire known to management. If the Company can use the employee in its operation of the feed mill or feed haul, the employee must be paid for vacation and allowed to continue working.

74. If a holiday falls during an employee's vacation period, the employee shall receive holiday pay in addition to vacation pay. Upon termination of an employee's service for any reason, vacation pay due him will be calculated as follows:

A) Prior to second anniversary - Employee will receive any vacation pay earned during the first year of employment less any vacation already taken or been paid for since the employee's first anniversary date.

B) After the employee's second anniversary - Employee will receive the vacation pay earned during

the year prior to the employee's last employment anniversary less any vacation the employee may have taken or been paid for since said date plus a pro-rata share of the annual vacation earned since last employment anniversary. Pro-rata vacation will be calculated on one-twelfth (1/12th) basis payable to the nearest month.

75. Paragraph number 74 in Article eleven (11) refers to and applies to vacation only.

76. For the purpose of determining whether an employee has complied with the two hundred (200) days work requirement specified in paragraphs 67, 68 and 69 hereof, the following work days on which an employee is absent shall be considered as time worked for the purpose of such two hundred (200) days work requirement only:

A) Work days on which an employee is necessarily absent from work due to an injury arising out of and in the course of the employee's employment with the Company.

B) Work days on which an employee is paid weekly benefits under the Company's group insurance plan: provided that the work days during the first seven (7) days of sickness shall be counted where the employee's weekly benefit payments do not commence until the eighth (8th) day of sickness.

ARTICLE 12 - LEAVE OF ABSENCE

77. Leaves of absence not to exceed thirty (30) days may be granted by the Company in writing. Any employee returning from a personal leave of more than five (5) consecutive working days must provide the Company with a minimum advance notice of twenty-four (24) hours. The above advance notice requirement shall also apply, where possible, to sick leaves of absence of five (5) or more consecutive days.

78. Leaves of absence for periods in excess of thirty (30) days without loss of seniority shall be granted by mutual consent to the parties hereto in writing. Leaves of absence without loss of seniority shall be granted to employees elected to Union office.

79. Any regular employee called for military service, or who may elect to volunteer for military service during the period the Selective Training and Service Act is in effect, shall, upon being honorably discharged, be reinstated with the Company and shall retain full rights of seniority in accordance with the provisions of the Universal Military Training and Service Act of 1951 and amendments thereto.

80. Disability Leave

A) A full-time employee shall be granted a disability leave of absence to begin at a time, prior to disability, that a doctor(s) determines that employee should no longer work. The leave will expire at

such time as the doctor(s) determines the employee may safely return work.

B) in returning to work, an employee who has been on disability leave shall be returned to the job from which that employee left.

C) When returning to work, an employee who has been on disability leave shall notify the Company as to the date the doctor(s) specify the employee may safety return to work. Notice to return to work shall be no less than five (5) working days, if the employee is on leave for three weeks or longer.

D) Pregnancy leave shall be regarded as any other illness or disability as to the application of this Article.

ARTICLE 13 - JURY PAY

81. An employee who is required to be absent from work for jury service shall receive whatever straight-time pay the employee would have otherwise received up to and including forty (40) hours in any one (1) week less the amount of jury pay which the employee received for the same period. When the above is applicable, each full day of jury service shall be credited as one (1) eight (8) hour day in the computation of overtime and each partial day of jury service shall be credited as a partial day toward overtime. To be eligible for the above payment, the employee must notify their immediate supervisor at the time of the call to jury service and

must furnish evidence of the amount of pay received for jury service.

ARTICLE 14 - FUNERAL LEAVE

82. Upon presentation of reasonable proof, an employee who loses time on scheduled work days on account of death of members of the employee's immediate family will be paid up to three (3) days (each day at eight (8) hours straight time) for working time lost as a result of making arrangements or attendance at the funeral. For the purpose of this provision, a member of an employee's immediate family is one of the following: the employee's spouse, parent, child, brother, sister, mother-in-law, father-in-law, grandmother or grandfather. This provision will not be applicable on a day when the employee is on layoff status, is on vacation, is on a leave of absence, is absent due to illness or injury, nor will the employee receive holiday pay for any holiday defined herein, during the period of absence due to a death in the immediate family as described above. The Company shall be promptly notified of absence under this provision.

ARTICLE 15 - PHYSICAL EXAMINATIONS

83. Employees shall promptly comply with all physical or mental examinations required by the Company. The Company shall pay for any such physical or mental examination required by it and will designate the doctor or doctors to perform the physical and mental examination. If a medical examination of an employee discloses a condition which, in the judgment of the Company,

renders an employee unfit for service, the employee may be removed from service, provided, however, that the employee involved may be examined by a physician selected by the employee and at the employee's expense. If the findings of the Company's physician and the employee's physician are in conflict as to the employee's physical or mental fitness to perform the work of the job from which the employee was removed, a neutral physician shall be selected by the two physicians involved to examine the employee and report the findings as to the employee's physical or mental fitness to perform the work of the job from which the employee was removed which findings shall be final.

ARTICLE 16 - GENERAL

84. Employees shall be paid weekly. Not more than seven (7) calendar days wages shall be held back.

A) Regular attendance is expected of all employees and repeated absenteeism will subject an employee to disciplinary action.

B) Employees shall be given two (2) break periods of fifteen (15) minutes each per shift. Breaks shall be taken, if possible, nearest the middle of the work period before and after lunch. An additional fifteen (15) minute break shall be given after eleven hours work.

85. A copy of this Agreement shall be posted in the Feed Mill.

86. If the Company should require employees to wear uniforms, it will bear the cost for same. In the meantime, it is understood and agreed that all employees will report for work in neat, clean clothing. If in the course of a person's job, unusual circumstances result in damage to an employee's clothing or footwear, the Company will replace apparel so damaged. "Unusual circumstances" do not include normal wear and soiling that occur in a person's daily activities.

87. If any provision of this Agreement is held invalid by operation of law or by a tribunal of competent jurisdiction or if compliance with or enforcement of any provision hereof is restrained by such tribunal pending or final determination as to its validity, the remaining provisions hereof shall not be affected thereby. If any provision hereof is so held invalid or so restrained the parties hereto, upon the request of either party hereto, will enter into negotiations for the purpose of reaching an agreement on a provision to replace the provision involved in such invalidity or restraint.

ARTICLE 17 - RETIREMENT PLAN AND HEALTH AND WELFARE PLAN

88. The Company's Retirement Plan as it applies to employees covered by this Agreement shall remain in effect for the duration of this Agreement subject to any improvements the Company may make in this plan.

89. The Company Group Health and Welfare Plan as it applies to employees covered by this Agreement shall

remain in effect for the duration of this Agreement (Appendix C).

ARTICLE 18 - GRIEVANCE PROCEDURE AND ARBITRATION

90. In the event of any dispute arising regarding the interpretation or application of any of the terms of this Agreement or any other grievance, dispute or alleged violation of this Agreement, all matters shall continue unchanged in the plan, without any interruption, pending such final adjustments and without any strikes, lockouts, interruptions to or interference with production, by the Company, the Union or its members.

91. If employees feel they have a grievance and submits such grievance to the Management within seven (7) working days after the alleged grievance occurs, an earnest effort will be made to settle the grievance as listed below. Grievances not submitted within the time limitations will be forever barred.

92. Should any grievance as herein defined arise between the Company and the Union or its members as to the meaning and application of this Agreement or the interpretation of its terms, there shall be no suspension of work by the aggrieved on account of such grievance, but an earnest effort shall be made to settle it immediately in the following manner:

93. A) Any employee who feels that they have been aggrieved shall report such grievance to the Union steward. The Steward and/or employee shall then

attempt to satisfactorily adjust the grievance with the employee's immediate supervisor.

94. B) If such attempted adjustment fails, the employee shall then submit the grievance in writing. Any grievance not reduced to writing within seven (7) days after failure of the procedures in Step One, above, shall be waived. The grievance form shall be prepared triplicate and signed by the employee; the original and second copy shall be submitted to the applicable supervisor. The third copy shall be retained by the Union.

1) The Union Labor Relations Committee and Plant Management will then attempt to settle the grievance in a labor relations meeting.

2) In the event the grievance is not satisfactorily resolved at this level within four (4) working days, the Union's Business Representative and the Plant Manager shall meet in an attempt to solve the grievance.

In the event the grievance is still unresolved after an additional four (4) working days, then:

95. C) Then Union's Business Representative, or the appointed alternate, and an Industrial Relations Representative of the Company shall attempt to resolve the matter. If no agreement is reached within ten (10) working days after its submission to this step, then either party may refer it to:

96. D) An impartial arbitrator to decide the matter, such arbitrator to be selected by mutual agreement between the Company and the Union. If no agreement can be reached, the Federal Mediation and Conciliation Service shall be asked to present a panel of seven (7) arbitrators from which the parties to this Agreement shall alternately strike names until one name remains. The last name remaining shall be appointed arbitrator. The decision of this arbitrator shall be final and binding on all parties concerned. The arbitrator shall render a decision as soon as possible after the hearings have been concluded. Each party shall pay the expense of its own representatives and witnesses called, and the expense of the arbitrator shall be shared equally.

97. E) It is understood that the arbitrator shall have authority only to act with respect to the interpretation of application of the specific provisions of this Agreement. Arbitration may not be resorted to as a substitute for negotiations provided for in this Agreement.

98. F) The Company has the right to initiate action to settle any misunderstandings, complaints, or grievances in accordance with Paragraphs 94 and 95 above.

ARTICLE 19 - SUSPENSION AND DISCHARGE

99. A grievance involving the discharge or suspension of an employee other than a probationary employee shall be handled in accordance with the grievance procedure beginning with Step Two. No grievance arising from a

discharge or suspension by the Company shall be considered unless written notice on the grievance is given to the Company within ten (10) days after the discharge or suspension occurs.

100. A probationary employee may be discharged during the probationary period without recourse.

101. No employee shall be discharged unless the employee has previously been given at least one (1) warning notice in writing by Certified Mail or in person with a copy to the Union; provided that no warning notice is necessary in the case of discharge for any of the following causes: Dishonesty, intoxication or use of alcoholic beverages while on duty, recklessness or gross negligence resulting in serious accident or substantial damage to Company property or product, use of narcotics, carrying unauthorized passengers on a vehicle. In imposing discipline on a current charge, the Company will not take into account any prior warnings which occurred more than twelve (12) months previously.

ARTICLE 20 - NO-STRIKE-NO LOCK OUT AS LONG AS CONTRACT IS NOT VIOLATED

102. The Union agrees that there shall be no strikes, walk-outs, stoppage or slowdown of work, boycotts, secondary boycotts, refusal to handle any product, picketing, sit-down strikes of any kind, sympathetic or general strikes or any other interference with any kind of operations of the Company during the time of this Agreement so long as the grievance procedure for which provisions is made herein is followed by the

Company and the Company agrees to arbitration and abides by the result of arbitration therein provided, subject to the terms and agreements provided herein.

The Company agrees that there shall be no lockout during the term of this Agreement so long as the grievance procedure for which provision is made herein is followed by the Union and agrees to arbitration and abides by the result of arbitration therein provided.

ARTICLE 20a - PROTECTION OF RIGHTS

103. Employees may not be required to pass a picket line in the performance of their duties provided such picket line has been officially recognized by the local Union or International Union. Refusal to cross such picket lines shall not be considered a violation of this Agreement.

ARTICLE 21 - UNAUTHORIZED ACTIVITY

104. In the event there is a strike or work stoppage or threatened strike or work stoppage or slowdown or threatened slowdown which has not been instigated, inspired or authorized by the Union, the Union through its officers and representatives will immediately:

A) Make every possible effort to prevent the threatened strike, work stoppage or slowdown or to end any strikes, work stoppages or slowdowns.

B) Direct the members of the Union who are employees of the Company to promptly return to their respective jobs.

C) Publicly repudiate any strike, work stoppage or slowdown if unauthorized.

105. In consideration of the performance by the Union and its representatives as outlined above, the Company agrees that the Union, its officers and agents shall not be liable to suit for damages for any breach of this Contract not instigated, inspired or authorized by the Union.

106. Employees whose work is required for plant protection or prevention of damage to equipment or materials during any shutdown shall faithfully perform such service without interference.

ARTICLE 22 - GUARANTEED WEEKLY WAGE

107. To the best of its ability, the Company will endeavor to provide, but does not guarantee forty (40) hours of work each week.

ARTICLE 23 - TRUCK DRIVER SAFETY

108. The Company agrees ladders used in connection with delivering feed to farms should be in such condition as to be considered safe and that power lines should be a safe distance from the bins into which feed is delivered. It is further agreed that if a driver reports what the driver considers a violation of either situation the

Company will investigate. If they agree with the driver, they will endeavor to have the violation corrected. If they are not successful, it is agreed they will furnish the driver a ladder to be used until the flock then in the house is finished. After which the driver will not be required to make deliveries until the violation is corrected.

ARTICLE 24 - FEED DELIVERY

109. During the life of the Contract, Gold Kist Inc. agrees to continue delivery of both:

A) Feed used within Gold Kist Grow-Out operations other than feed being transferred between farms:

B) All other feed except hog feed presently purchased by large users accounts as long as such buyers continue purchasing from Gold Kist and as long as they continue satisfied with present delivery arrangements:

by means of trucking under the operation and supervision of Gold Kist Inc.

ARTICLE 25 - FAMILY MEDICAL LEAVE

110. Section 1. Eligible employees will be granted up to twelve (12) weeks of unpaid leave for their own serious illness, the birth or adoption of a child, or the care of a seriously ill child, spouse, or parent.

Section 2. Employees must be employed for at least one year and have worked at least 1,250 hours within the previous twelve (12) month period.

Section 3. Employees must exhaust all paid vacation or other paid leave before taking family leave. This paid time will be counted toward the twelve (12) weeks available for family leave.

Section 4. Employees shall immediately return to work upon termination of family leave. Failure to do so shall constitute termination of employment.

Section 5. An employee who has been granted family leave shall be considered as having quit without notice if while on family leave the employee engages in or applies for other employment.

Section 6. An employee who has obtained a family leave through fraud or misrepresentation shall be subject to discharge at the sole discretion of management.

Section 7. In the case of leave for birth or placement of a child, an employee must provide thirty (30) days advance notice before the date on which the leave would begin.

Section 8. Employees will be required to provide certification, acceptable to the company, of a serious health condition for their own condition or that of a family member. The employee must provide such certification to the company prior to the beginning of

the leave or in case of emergency within one (1) week of the beginning of the leave. The certification must include the date on which the serious health condition in question begins; the probable duration of the condition, appropriate facts regarding the condition; a statement that the employee is needed to care for a spouse, parent, or child (along with an estimate of the time required), or that the employee is unable to perform his or her job duties.

Section 9. The company may require subsequent recertification on a reasonable basis.

Section 10. After the leave period is completed the employee will return to either the same job or a job equivalent in pay.

ARTICLE 26 - ACCESS TO COMPANY PROPERTY

111. The duly authorized business representative of the Union shall have access to the mill at a reasonable time when request for permission has been made to the Management.

ARTICLE 27 - DURATION OF AGREEMENT

112. This Agreement is effective February 1, 1998 and shall remain in full force and effect through January 31, 2001 and from year to year thereafter, unless amended or terminated as herein provided.

113. Either party hereto may move to amend or terminate this Agreement on February 1, 2001 or at the end of any

yearly period thereafter, by giving written notice to the other party sixty (60) days prior to the desired date of amendment or termination.

114. In the event either party hereto given written notice to the other party of intention to amend this Agreement, said notice shall contain the matter of proposed amendment or amendments and negotiations shall begin at least thirty (30) days before the expiration date (subject to waiver by either party).

115. All amendments agreed upon as part of Contract negotiations prior to February 1st of any year shall be effective as of February 1st of that year. Any amendments agreed upon as part of Contract negotiations after February 1st shall be retroactive only for period not to exceed sixty (60) days.

116. This Agreement may be amended or revised in any of its provisions at any time during its existence, provided such amendments or revisions are approved in writing and subscribed to by all parties to this Agreement.

/s/ TEAMSTERS LOCAL UNION 612

/s/ GOLD KIST INC., JASPER, ALABAMA FEED MILL

APPENDIX "A"
WAGE SCHEDULE

	Effective 1/26/98 (30¢)	Effective 2/1/99 (25¢)	Effective 1/31/00 (25¢)
Mechanic Specialist	$11.64	$11.89	$12.14
Maintenance Specialist	11.10	11.35	11.60
First Class Maintenance Man Production	10.80	11.05	11.30
Maintenance First Class	10.64	10.89	11.14
Maintenance Second Class	10.39	10.64	10.89
Utility	10.24	10.49	10.74
Tractor Trailer Driver	10.20	10.45	10.70
Pellet Mill Operator	10.09	10.34	10.59
Truck Driver	10.09	10.34	10.59
Bulk Scale Loader	10.04	10.29	10.54
Unloader	10.04	10.29	10.54
Laborer	9.84	10.09	10.34

1. Employees assigned as maintenance first class and second class in the feed mill and truck garage shall receive ten cents (10¢) per hour more than the amount designated in the above wage schedule as a tool allowance.

2. In addition to rates set forth in the above wage schedule, an additional ten cents (10¢) per hour will be paid to all feed mill employees in lieu of the incentive plan.

APPENDIX "B"
ASSIGNMENT OF DUES DEDUCTION

I, the undersigned, an employee of the _____ do hereby authorize the Teamsters Local Union No. 612, to place my name on the membership check-off and the Company shall deduct from my earnings all dues, (application fees, fines and assessments) owed to the Local Union of said check-off and turn same over to the proper officials of the Union.

This Authorization is irrevocable for the tenure of the Union Agreement with the above named Company and if not revoked by myself on or before the expiration date of the Union Agreement then this Authorization will continue thereafter, from year to year unless I give written notice of revocation to my Employer and the Union, on or before the Annual Date of Expiration of the Agreement, thereafter, which is my legal right if I so desire.

SIGNATURE_____ DATE_____

WITNESS_____

APPENDIX "C"
GROUP LIFE & HOSPITAL INSURANCE

The Company and employees agree to pay premiums for the following coverage:

1.	Life Insurance and Accidental Death & Dismemberment	$ 5,000.00
	Dependent Life - Wife	1,000.00
	- Each Eligible Child	500.00
2.	Hospital Expense -	
	Room and Board (max 70 days)	Semi-Private
	Other Hospital Expense (max)	700.00
3.	Maternity Expense -	
	Obstetrical (max)	200.00
4.	Surgical Expense (max)	500.00
5.	Doctors Calls (in hospital only) (per day)	7.50
6.	Major Medical (75% after 1st $150.00)	400,000.00
8.	X-Ray and Lab (Outpatient) (annual max)	$50/$50

In the event of layoff, an employee may continue hospitalization insurance for a maximum period of six (6) months provided they pay 100% of the premium in advance on a monthly basis.

EMPLOYEE MONTHLY CONTRIBUTIONS

Employee Only	Employee & Family
Effective 2/1/98 - $25.00	$58.00

WEEKLY SICKNESS AND ACCIDENT BENEFIT
(PAYROLL BENEFIT) $80.00

Maximum of thirteen (13) weeks after first (1st) day accident and seventh (7th) day sickness, except for cases covered by Worker's Compensation.

Employees hired on or after February 1, 2000, will be eligible for sickness and accident benefits after one (1) year of employment.